

Introduced by Senator Kehoe

February 22, 2005

An act to amend Sections 945, 1363, 1374, and 1378 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 853, as introduced, Kehoe. Common interest developments.

(1) The Davis-Stirling Common Interest Development Act defines and regulates common interest developments. Existing law requires that when a common interest development association's governing documents require association approval before an owner may make a physical change to the owner's separate interest or to the common area, the association must satisfy specified provisions. Among these provisions is a requirement that a decision on a proposed change be consistent with any governing provision of law, including the Fair Employment and Housing Act.

This bill would specify that the requirement that a decision on a proposed change be consistent with any governing provision of law, described above, is not affected by contrary provisions in the association governing documents. The bill would also provide other examples of law with which a decision of the association must be consistent.

(2) Existing law provides that a common interest development association has standing to institute, defend, settle, or intervene in specified civil proceedings in its own name, and addresses the reduction of damages for comparative fault in this context.

This bill would delete erroneous cross references and make nonsubstantive, technical changes in reference to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 945 of the Civil Code is amended to read:

945. The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their successors-in-interest. For purposes of this title, associations and others having the rights set forth in ~~Section 383 of the Code of Civil Procedure~~ Sections 1368.3 and 1368.4 shall be considered to be original purchasers and shall have standing to enforce the provisions, standards, rights, and obligations set forth in this title.

SEC. 2. Section 1363 of the Civil Code is amended to read:

1363. (a) A common interest development shall be managed by an association ~~which~~*that* may be incorporated or unincorporated. The association may be referred to as a community association.

(b) An association, whether incorporated or unincorporated, shall prepare a budget pursuant to Section 1365 and disclose information, if requested, in accordance with Section 1368.

(c) Unless the governing documents provide otherwise, and regardless of whether the association is incorporated or unincorporated, the association may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code, except that an unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code.

The association, whether incorporated or unincorporated, may exercise the powers granted to an association ~~by Section 383 of the Code of Civil Procedure and the powers granted to the association~~ in this title.

(d) Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt.

(e) Notwithstanding any other provision of law, notice of meetings of the members shall specify those matters the board intends to present for action by the members, but, except as

1 otherwise provided by law, any proper matter may be presented
2 at the meeting for action.

3 (f) Members of the association shall have access to association
4 records, including accounting books and records and membership
5 lists, in accordance with Article 3 (commencing with Section
6 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the
7 Corporations Code. The members of the association shall have
8 the same access to the operating rules of the association as they
9 have to the accounting books and records of the association.

10 (g) If an association adopts or has adopted a policy imposing
11 any monetary penalty, including any fee, on any association
12 member for a violation of the governing documents or rules of
13 the association, including any monetary penalty relating to the
14 activities of a guest or invitee of a member, the board of directors
15 shall adopt and distribute to each member, by personal delivery
16 or first-class mail, a schedule of the monetary penalties that may
17 be assessed for those violations, which shall be in accordance
18 with authorization for member discipline contained in the
19 governing documents. The board of directors shall not be
20 required to distribute any additional schedules of monetary
21 penalties unless there are changes from the schedule that was
22 adopted and distributed to the members pursuant to this
23 subdivision.

24 (h) When the board of directors is to meet to consider or
25 impose discipline upon a member, the board shall notify the
26 member in writing, by either personal delivery or first-class mail,
27 at least 10 days prior to the meeting. The notification shall
28 contain, at a minimum, the date, time, and place of the meeting,
29 the nature of the alleged violation for which a member may be
30 disciplined, and a statement that the member has a right to attend
31 and may address the board at the meeting. The board of directors
32 of the association shall meet in executive session if requested by
33 the member being disciplined.

34 If the board imposes discipline on a member, the board shall
35 provide the member a written notification of the disciplinary
36 action, by either personal delivery or first-class mail, within 15
37 days following the action. A disciplinary action shall not be
38 effective against a member unless the board fulfills the
39 requirements of this subdivision.

(i) Whenever two or more associations have consolidated any of their functions under a joint neighborhood association or similar organization, members of each participating association shall be (1) entitled to attend all meetings of the joint association other than executive sessions, ~~(1) shall be~~ (2) given reasonable opportunity for participation in those meetings, and ~~(2) shall be~~ (3) entitled to the same access to the joint association's records as they are to the participating association's records.

(j) Nothing in this section shall be construed to create, expand, or reduce the authority of the board of directors of an association to impose monetary penalties on an association member for a violation of the governing documents or rules of the association.

SEC. 3. Section 1374 of the Civil Code is amended to read:

1374. Nothing in this title may be construed to apply to a development wherein there does not exist a common area as defined in subdivision (b) of Section 1351, ~~nor may this title be construed to confer standing pursuant to Section 383 of the Code of Civil Procedure to an association created for the purpose of managing a development wherein there does not exist a common area.~~

This section is declaratory of existing law.

SEC. 4. Section 1378 of the Civil Code is amended to read:

1378. (a) This section applies if an association's governing documents require association approval before an owner of a separate interest may make a physical change to the owner's separate interest or to the common area. In reviewing and approving or disapproving a proposed change, the association shall satisfy the following requirements:

(1) The association shall provide a fair, reasonable, and expeditious procedure for making its decision. The procedure shall be included in the association's governing documents. The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for response to an application or a request for reconsideration by the board of directors.

(2) A decision on a proposed change shall be made in good faith and may not be unreasonable, arbitrary, or capricious.

(3) ~~A~~ *Notwithstanding a contrary provision of the governing documents*, a decision on a proposed change shall be consistent with any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing

1 with Section 12900) of Division 3 of Title 2 of the Government
2 ~~Code~~ Code), or a building code or other applicable law
3 governing land use or public safety.

4 (4) A decision on a proposed change shall be in writing. If a
5 proposed change is disapproved, the written decision shall
6 include both an explanation of why the proposed change is
7 disapproved and a description of the procedure for
8 reconsideration of the decision by the board of directors.

9 (5) If a proposed change is disapproved, the applicant is
10 entitled to reconsideration by the board of directors of the
11 association that made the decision, at an open meeting of the
12 board. This paragraph does not require reconsideration of a
13 decision that is made by the board of directors or a body that has
14 the same membership as the board of directors, at a meeting that
15 satisfies the requirements of Section 1363.05. Reconsideration by
16 the board does not constitute dispute resolution within the
17 meaning of Section 1363.820.

18 (b) Nothing in this section authorizes a physical change to the
19 common area in a manner that is inconsistent with an
20 association's governing documents or governing law.

21 (c) An association shall annually provide its members with
22 notice of any requirements for association approval of physical
23 changes to property. The notice shall describe the types of
24 changes that require association approval and shall include a
25 copy of the procedure used to review and approve or disapprove
26 a proposed change.